



September 20, 2002

Mr. Kuruvilla Oommen  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2002-5315

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168947.

The Houston Police Department (the "department") received a request for copies of three categories of information pertaining to lists of narcotics officers. You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.108 and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

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<sup>1</sup> Although you claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code, you did not provide us with comments stating any reasons why the requested information would specifically be excepted from disclosure under section 552.101. See Gov't Code § 552.301(e)(1)(A). Accordingly, we do not address your section 552.101 claim with respect to any portion of the submitted information.

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code 552.108(a), (b). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate how and why release of the requested information would interfere with law enforcement. *See* Gov't Code § 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the information at issue constitutes a city police department narcotics division roster that contains assignments. You also state that this roster was prepared only for internal use and that the release of the roster holds the potential for immediate danger to an officer, confidential informant, or an investigation. We note that this office has stated that procedural information related to law enforcement may, under some circumstances, be withheld under section 552.108 or its statutory predecessors. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 341 (1982) (Department of Public Safety drivers' licenses forgery detection procedures), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). Based on your representations and our review of the submitted information in Exhibit 2, we agree that the release of portions of this roster would interfere with law enforcement and crime prevention. *See* Gov't Code § 552.108(b)(1). Accordingly, we conclude that the department may withhold from disclosure the portions of Exhibit 2 that would reveal the identity of those officers who are engaged in undercover narcotics work pursuant to section 552.108(b)(1). *See* Open Records Decision No. 211 at 3 (1978). However, we also find that the department has failed to sufficiently demonstrate how the release of the remaining portions of this roster would interfere with law enforcement and crime prevention. Accordingly, we conclude that the department may not withhold the remaining portions of this roster from disclosure under section 552.108 of the Government Code.

However, the department also claims that portions of this roster are excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. *See* Gov't Code § 552.117(2). Section 552.117(2) applies to peace officers as defined

by article 2.12 of the Code of Criminal Procedure. Accordingly, we conclude that the department must withhold from disclosure the home telephone numbers of all licensed peace officers noted in Exhibit 2 pursuant to section 552.117(2) of the Government Code.

Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the department must withhold from disclosure the home telephone numbers of all other narcotics division employees contained within Exhibit 2 pursuant to section 552.117(1) of the Government Code, if the employees to whom these numbers pertain requested confidentiality for this information in accordance with section 552.024 prior to the department's receipt of the present request. Otherwise, these home telephone numbers must be released to the requestor.

In summary, the department may withhold from disclosure the portions of Exhibit 2 that would reveal the identity of those officers who are engaged in undercover narcotics work pursuant to section 552.108(b)(1) of the Government Code. The department must withhold from disclosure the home telephone numbers of all licensed peace officers noted in Exhibit 2 pursuant to section 552.117(2) of the Government Code. The department must withhold from disclosure the home telephone numbers of all other narcotics division employees contained within Exhibit 2 pursuant to section 552.117(1) of the Government Code, if the employees to whom these numbers pertain requested confidentiality for this information in accordance with section 552.024 prior to the department's receipt of the present request. Otherwise, these home telephone numbers must be released to the requestor. The remaining submitted information contained within Exhibit 2 must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

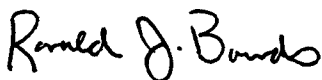
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 168947

Enc. Submitted documents

cc: Ms. Anna Werner  
KHOU-TV  
P.O. Box 11  
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(w/o enclosures)